

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING FOOD ESTABLISHMENTS;
5 REVISING FOOD ESTABLISHMENT LICENSURE FEES; REQUIRING A LICENSE FOR ESTABLISHMENTS OF
6 TEMPORARY RISK; DEFINING "TEMPORARY RISK"; REQUIRING ANNUAL INSPECTIONS; ALLOWING
7 INSPECTIONS MORE OFTEN THAN ONCE A YEAR; AMENDING SECTIONS 50-50-102, 50-50-202,
8 50-50-205, AND 50-50-301, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 50-50-102, MCA, is amended to read:

13 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
14 definitions apply:

15 (1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not
16 potentially hazardous foods.

17 (2) (a) "Commercial establishment" means an establishment operated primarily for profit.

18 (b) The term does not include a farmer's market.

19 (3) "Department" means the department of public health and human services provided for in
20 2-15-2201.

21 (4) "Establishment" means a food manufacturing establishment, meat market, food service
22 establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

23 (5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer,
24 or an organized market authorized by the appropriate municipal or county authority.

25 (6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale
26 for human consumption.

27 (7) "Food manufacturing establishment" means a commercial establishment and buildings or
28 structures in connection with it used to manufacture or prepare food for sale or human consumption, but
29 does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants,
30 slaughterhouses, or meat packing plants.

(8) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers or a private organization serving food only to its members.

(c) The term does not include an establishment, as defined in 50-51-102, that serves food only to its registered guests.

(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(13) "Perishable food dealer" means a person or commercial establishment that is in the business of purchasing and selling perishable food to the public.

(14) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(15) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of *Clostridium botulinum*.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24° C (75° F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(16) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24° C (75° F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (16)(a).

(17) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(18) "Temporary risk" means a temporary food service establishment that operates for no more than 14 consecutive days in conjunction with a single event or celebration."

1 **Section 2.** Section 50-50-202, MCA, is amended to read:

2 **"50-50-202. Establishments exempt from license requirement -- farmer's market records.** (1)

3 Establishments owned or operated by the state or a political subdivision of the state are exempt from
4 licensure but ~~must~~ shall comply with the requirements of this chapter and rules adopted by the department
5 under this chapter.

6 (2) A license is ~~not~~ required to operate an establishment of temporary risk ~~if it is operated by a~~
7 ~~nonprofit organization for a period of less than 14 days in 1 calendar year.~~ An establishment ~~exempt from~~
8 subject to licensure under this subsection ~~must~~:

9 (a) must be operated in compliance with the remaining provisions of this chapter and rules adopted
10 by the department under this chapter; and

11 (b) prior to each operation, shall register with the local health officer or sanitarian on forms
12 provided by the department.

13 (3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and
14 unprocessed farm products at a farmer's market.

15 (b) A license is not required of a person selling baked goods or preserves at a farmer's market.

16 (4) (a) A farmer's market that is an organized market authorized by a municipal or county authority
17 shall keep registration records of all individuals and organizations that sell baked goods or preserves at the
18 market.

19 (b) The registration records must include but are not limited to the name of the seller, the seller's
20 address and telephone number, the products sold by the seller, and the date the products were sold.

21 (c) The registration records must be made available to the local health officer or the officer's
22 agent."

23
24 **Section 3.** Section 50-50-205, MCA, is amended to read:

25 **"50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) ~~For~~ Except
26 as provided in subsection (3), for each license issued, the department shall collect a fee of ~~\$60~~ \$75. It
27 shall deposit 85% of the fees collected under this section into the local board inspection fund account
28 created in 50-2-108, 7.5% of the fees into the general fund, and 7.5% of the fees into the account
29 provided for in 50-50-216.

30 (2) In addition to the license fee required under subsection (1), the department shall collect a late

1 fee from any licensee who has failed to submit a license renewal fee prior to the expiration of the
2 licensee's current license and who operates an establishment governed by this part in the next licensing
3 year. The late fee is \$25 and must be deposited in the account provided for in 50-50-216.

4 (3) The department shall grant a license to an establishment that qualifies as a temporary risk and
5 shall collect a fee of \$40.

6 ~~(3)~~(4) A county or other local government may not impose an inspection fee or charge in addition
7 to the fee provided for in ~~subsection~~ subsections (1) through (3) unless a violation of this chapter or rule
8 persists and is not corrected after two visits to the establishment.

9 ~~(4)~~(5) The fees in subsections (1) ~~and~~ (2) through (3) may be paid by credit card and may be
10 discounted for payment processing charges paid by the department to a third party. However, the
11 discounting of license fees may not reduce the fees paid into the local board inspection fund account
12 established in 50-2-108."

13
14 **Section 4.** Section 50-50-205, MCA, is amended to read:

15 **"50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) ~~For~~ Except
16 as provided in subsection (3), for each license issued, the department shall collect a fee of ~~\$60~~ \$90. It
17 shall deposit 85% of the fees collected under this section into the local board inspection fund account
18 created in 50-2-108, 7.5% of the fees into the general fund, and 7.5% of the fees into the account
19 provided for in 50-50-216.

20 (2) In addition to the license fee required under subsection (1), the department shall collect a late
21 fee from any licensee who has failed to submit a license renewal fee prior to the expiration of the
22 licensee's current license and who operates an establishment governed by this part in the next licensing
23 year. The late fee is \$25 and must be deposited in the account provided for in 50-50-216.

24 (3) The department shall grant a license to an establishment that qualifies as a temporary risk and
25 shall collect a fee of \$40.

26 ~~(3)~~(4) A county or other local government may not impose an inspection fee or charge in addition
27 to the fee provided for in ~~subsection~~ subsections (1) through (3) unless a violation of this chapter or rule
28 persists and is not corrected after two visits to the establishment.

29 ~~(4)~~(5) The fees in subsections (1) ~~and~~ (2) through (3) may be paid by credit card and may be
30 discounted for payment processing charges paid by the department to a third party. However, the

1 discounting of license fees may not reduce the fees paid into the local board inspection fund account
2 established in 50-2-108."

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4 **Section 5.** Section 50-50-301, MCA, is amended to read:

5 **"50-50-301. Health officers and sanitarians to make investigations and inspections.** State and
6 local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and
7 inspections of establishments once a year and make reports to the department as required under rules
8 adopted by the department. An inspection may be conducted more often than once a year."

9

10 NEW SECTION. **Section 6. Effective dates.** (1) [Sections 1 through 3 and 5 and this section] are
11 effective January 1, 2002.

12 (2) [Section 4] is effective January 1, 2003.

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14 NEW SECTION. **Section 7. Termination.** [Section 3] terminates December 31, 2002.

15 - END -